Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. 78-650

PATRICIA K. CORBETT,

Petitioner,

vs.

VINCENT J. THOR AND FRANCIS THOR,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO SUPREME COURT OF ~~UNITED STATES~~ IOWA

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IN THE

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OCTOBER TERM, 1978

NO. _____

PATRICIA K. CORBETT,

Petitioner,

vs.

VINCENT J. THOR AND FRANCIS THOR,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO SUPREME COURT OF THE UNITED STATES

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Patricia K. Corbett, the Petitioner herein, by and through her counsel, hereby prays that a writ of certiorari issue to review the opinion of the Supreme Court of Iowa entered in the above-entitled case on June 28, 1978 and the subsequent Order of the Supreme Court of Iowa entered on July 20, 1978 denying the petitioner's petition for

rehearing.

OPINIONS BELOW

The opinion of the Supreme Court of Iowa is unreported as the decision was made without a formal opinion prepared for publication in the permanent law reports. The opinion of the Supreme Court of Iowa is attached hereto and referred to as Appendix A. Also attached hereto and referred to as Appendix B is the July 20, 1978 Order of the Supreme Court of Iowa denying the petitioner's petition for rehearing.

JURISDICTION

The opinion of the Supreme Court of Iowa (Appendix A) was entered on June 20, 1978. A timely petition for rehearing was denied on July 20, 1978 (Appendix B). The jurisdiction of the Supreme Court of the United States is involved pursuant to 28 USC Section 1257 (3).

QUESTIONS PRESENTED

Is the Iowa Guest Statute, Section 321.494, Code of Iowa, of itself or as applied in this action unconstitutional under the equal protection clause of the Constitution of the United States?

STATUTE INVOLVED

The Iowa Guest Statute, Section 321.494, Code of Iowa, provides:

"The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire unless damage is caused as a result of the driver of said motor vehicle being under the influence of an alcoholic beverage, a narcotic, hypnotic, or other drug or any combination of such substances, or because of the reckless operation by him of such motor vehicle."

STATEMENT OF THE CASE

This is a personal injury action. The Plaintiff, Patricia K. Corbett, filed this action seeking $90,000.00 in damages from the defendants, Vincent J. Thor, Francis Thor and William R. David. Vincent J. Thor was the operator of an automobile in which Patricia K. Corbett was a guest passenger. The automobile was owned by the defendant, Francis Thor. The driver of the other automobile involved in the collision was William R. David. The Plaintiff in Division I of her Petition-At-Law stated a cause of action against Vincent J. Thor and Francis Thor based upon

allegations of reckless driving (Count I) and negligence (Count II). In Division II, the Plaintiff stated a cause of action in negligence against the other driver, William R. David. (Plaintiff's Petition-At-Law)

The trial court sustained the Defendants-Thors' motion for directed verdict as to Count II of Division I and removed the question of Vincent J. Thor's negligence from the jury. (Trial Court's order on defendants' motion for a directed verdict). The Plaintiff took due exception to said action at Trial Court's hearing on defendant's motion for directed verdict and also objected to the Court's failure to submit jury instructions allowing the jury to find for the Plaintiff based upon Vincent J. Thor's negligent driving.

After a jury trial, the jury returned a verdict finding in favor of all three defendants. This verdict in effect was a finding that Vincent J. Thor was not causally reckless and that William R. David was not causally negligent. Thereafter, the Plaintiff filed a Motion For New Trial which was grounded upon the unconstitutionality of the Iowa guest statute, per se, and as applied in this action. The

trial court denied said motion and the Plaintiff appealed from said action.

STATEMENT OF THE EVIDENCE

The Plaintiff, Patricia K. Corbett, was an 18 year old student at Clarke College in Dubuque. On October 24, 1973, she and three of her classmates were hitch-hiking from Clarke College to Loras College in Dubuque. They were picked up by the Defendant-driver, Vincent J. Thor. The Defendant-driver, Vincent J. Thor, was driving an automobile owned by his father, Francis Thor. Neither of the said Defendants knew Patricia K. Corbett nor any of her said classmates.

The Defendant-driver, Vincent J. Thor, proceeded to drive to Loras College. At the intersection of Loras Blvd. and Alta Vista Street, he made a left-hand turn onto Alta Vista Street. The evidence was overwhelming that the Defendant-driver, Vincent J. Thor, was negligent in the manner of making the left-hand turn and that it was a proximate cause of the collision with the David vehicle and resulting injuries and damages of the Plaintiff. Even the trial court found that as a matter of law. Also, the trial court found as a matter of law that the Plaintiff, Patricia K. Corbett, was not contributorily negligent and suffered personal

injuries and substantial resulting damages as a proximate result of the negligence of her host driver, Vincent J. Thor.

REASONS FOR GRANTING WRIT

Certiorari Should Be Granted to Resolve Conflicts in the Interpretation and Implementation of Constitutional Principles Among the States

A. INTRODUCTION

The Supreme Court of The United States is again confronted with the blatant injustice of a state guest statute. The Iowa Supreme Court has again by a narrow 5 to 4 decision upheld the constitutionality of the Iowa guest statute.

The inherent unfairness of the guest statute is compounded because of the fact that most states have by court decision or legislation terminated this legal anomaly. There are only a dozen states or so which still cling precariously to this institutionalized injustice. Thus, when a Wisconsin resident, such as the plaintiff in this case, has the misfortune of being passenger in an automobile which is involved in an accident in Iowa, the

Iowa guest statute intervenes to rob her of her legal rights to compensation.

The violation of the constitutional right to equal protection of the laws guaranteed by the XIV Amendment to the United States Constitution is further intensified by the inconsistent and arbitrary exceptions and conditions which have been applied by the various state courts in implementing the various guest statutes.

B. PRESENT FEDERAL STATUS OF GUEST STATUTES

The United States Court of Appeals, Seventh Circuit in the 1976 case of Sidle v. Majors, 536 F. 2d, 1156 (7th Cir, 1976) came very close to finding the Indiana guest statute, which is very similar to Iowa's, unconstitutional. However, the Circuit Court found that because of the United States Supreme Court's 1974 dismissal of a similar appeal for want of a substantial question, that it was bound by the ruling in Silver v. Silver, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221. (1929). Silver purported to find that a similar Connecticut guest statute did not contravene the Equal Protection Clause of the 14th Amendment to the United States Constitution.

The 7th Circuit Court of Appeals found there were three (3) stated purposes in Indiana for the guest statute, to-wit: 1) to foster hospitality, 2) to prevent collusion, and 3) to avoid escalation of automobile liability insurance premiums. The Court rejected all of these stated purposes, one by one, using the reasoning which has been applied in numerous state court decisions since 1973. The Circuit Court concluded:

> "...we consider the foregoing considerations to be persuasive that this guest statute contravenes the Equal Protection Clause ..." At p. 1185.

While the Circuit Court found that the United States Supreme Court's ruling in Silver v. Silver, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221 (1929) had not been overruled and was therefore the apparent precedent, the Court found:

> "However, the rule of that case has been so eroded by subsequent decisions (see e.g. Vlandis v. Kline, 412 U.S. 441, 93 S.Ct. 2230, 37 L. Ed. 2d 63) that it should no longer control under the Equal Protection Clause. Silver focused on whether the

> Connecticut statute could properly apply to motor vehicles as distinguished from other forms of transportation. The opinion did not consider whether the statute discriminated against a class of plaintiffs (280 U.S. at 123, 50 S.Ct. at 58, 74 L. Ed. at 225) and is therefore distinguishable."
>
> "As with the Indiana decision here, the Silver ruling relies on the notion that it is unfair to impose liability on the host and the fear that the courts will be inundated with troublesome lawsuits. At that time two factors supported the Supreme Court's decision to defer to the legislature's judgment on these questions. Widespread automobile use was still new and society needed time to develop methods of assessing the cost of the inevitable injuries. When the guest statutes are viewed as an initial attempt to cope with the problem it was entirely proper for the Court to let the legislature make the decision. However, that is no longer the case. Liability insurance is a means by which the cost is borne by motorists as a class, not the individual driver. Further,

> experience teaches us that no fewer suits are filed by virtue of such statutes. The premises of Silver v. Silver being no longer valid in the light of modern authority, we believe that on plenary review the Supreme Court would not hold the Silver controls the question before us. See Brown v. Board of Education, 347 U.S. 483-494, 74 S. Ct. 686, 691, 98 L. Ed. 873, 880." 536 F. 2 at pp. 1158 & 1159.

Finally, the Sidle Court concluded:

> "We can find no necessary rational relation to a legitimate state interest (Reed v. Reed, 404 U.S. 71, 75-76 92 S. Ct. 251, 253-254, 30 L. Ed. 2d 225, 229) that would require us to sustain the legislation." 536 F.2 at P. 1159.

While the 7th Circuit Court found that because of a summary disposition of the United States Supreme Court that it could not reverse the lower court's summary judgment against the Plaintiff, the Court concluded its opinion in Sidle as follows:

> "Although we are the first court of appeals to consider the equal

> protection challenge to a guest statute, the high courts of several states have already grappled with the problem, and the split among them has been noted (supra P. 1159). Indeed the Supreme Courts of Nevada and New Mexico invalidated their states' guest statutes after the Supreme Court of the United States acted in Cannon. See Laakonen v. Eighth Judicial District Court, supra; McGeehan v. Bunch, supra. The frequency with which the question has arisen and the disagreement among the courts attest to the importance of the issue, its difficulty and the need for conclusive resolution so that the present viability of Silver v. Silver can be authoritatively determined". 536f. 2d at p.160.

The position of the 7th Circuit Court in Sidle regarding the guest statute was quoted favorably by Justice Brennan in his dissent in the memorandum decision in Colorado Springs Amusements Ltd. v. Rizzo, ___U.S. _____, 96 S. Ct. 3228, 3230, _____ L. Ed 2d _____(1976). Justice Brennan was very upset that the Circuit Court felt procedurally bound by a United States Supreme Court case which

had dismissed an appeal questioning the constitutionality of the guest statute for want of a substantial question.

Justice Brennan stated:

> "We depreciate the precedential weight of summary depositions in our decisional process, expressly holding in Edelman v. Jordan, 415 U.S. 651, 671, 94 S.Ct. 1347, 39 L.Ed. 2d 662 (1974), that such dispositions 'are not of the same precedential value as would be an opinion of this Court treating the question on the merits.' I would not require district courts, courts of appeals, and state courts to ascribe any greater precedential weight to summary dispositions than this Court does. Accordingly, I did not join the holding in Hicks v. Miranda, 422 U.S. 332, 344-345, 95 S.Ct. 2281, 45 L.Ed. 2d 223 (1975), that 'the lower courts are bound by summary decisions by this Court,' which requires state and lower federal courts to treat our summary dispositions of appeals as conclusive precedents regarding constitutional challenges to like state statutes or ordinances." At

p. 3228.

After discussing the Sidle case Justice Brennan dissent states:

> "A further anomaly is that we may have denied certiorari in state and federal cases dealing with a specific issue where the decisions below reach inconsistent results, but these conflicts are then resolved merely by dismissing a single appeal from a state court decision. This, in my view, is both an unwise and unseemly administration of justice."
>
> "Moreover, of the eight state cases invalidating guest statutes cited by the Seventh Circuit in Sidle, see n. 3, supra, six were based on federal and state grounds, while two were based solely on state law. We therefore had no jurisdiction to renew (sic) these decisions. Minnesota v. National Tea Co., 309 U.S. 551, 60 S.Ct. 676, 84 L.Ed. 920 (1940). On the other hand, the Sidle court also cited seven state decisions upholding guest statutes, all of which necessarily reject both the state and federal claims. One of these cases was appealed to this Court,

> and we dismissed the appeal. And now, simply because we declined to review the only one of these 15 cases to come to this Court, an obviously substantial federal question is to be deemed forclosed. See p. 3229, supra."

Footnote 4 at p. 3231.

If the position of the 7th Circuit Court as stated in Sidle is ever presented to the United States Supreme Court as proposed by Justice Brennan in Colorado Springs Amusements Ltd, supra, there is no question that all of the remaining guest statutes including Iowa's will all fall, not with a loud bang but with an extended sigh of relief.

C. STATE DECISIONS HOLDING GUEST STATUTES UNCONSTITUTIONAL

While the various state guest statutes may vary somewhat they all are substantially the same.

In the 1973 case of Brown v. Merlo, 8 Cal. 3d 855, 106 Cal. Rptr. 388, 506 P. 2d 212 (1973), the first direct judicial action nullifying a guest statute on constitutional grounds was taken. Both prior to Brown and subsequently a number of enlightened

state legislatures saw the handwriting of reason on the wall of justice and rescinded their guest statutes, thus obviating the need for judicial intervention. While Brown v. Merlo was the beginning of a number of state court decisions finding guest statutes violative.

Following close on the heels of Brown v. Merlo, the Supreme Court of Kansas in Henry v. Bauder, 213 Kan. 751 518 P. 2 362 (1974) held that the Kansas guest statute violated the Kansas and United States Constitution equal protection guarantees.

The North Dakota Supreme Court in Johnson v. Hassett, 217 N.W. 2d 771 (N.D., 1974) found the North Dakota guest statute as violative of provisions of the North Dakota constitution forbidding the granting of special privileges and immunities to any class of citizens and requiring that laws have uniform operation and not deny due process of law.

The year 1974 also saw the Supreme Court of Idaho declaring the Idaho guest statute as unconstitutional under both the Idaho and United States Constitutions in the case of Thompson v. Hagan, 96 Idaho 19 253 P. 2d 1365 (1974).

> "No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause for damages against such owner or operator for injuries, death or loss, in case of accident, unless such accident shall have been intentional on the part of the said owner or operator or caused by his intoxication or gross negligence." At p. 1367.

Before the year 1974 was over yet another state namely, Ohio, had held their state guest statute was unconstitutional, ie., in violation of the Ohio and United States Constitutional equal protection of the law provisions. The Ohio Court of appeals in Primes v. Tyler, 43 Ohio App. 2d 163, 335 N.E. 2d 373 (1974) and the Ohio Supreme Court in Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E. 2d 723 (1975) both measured the Ohio guest statute by the state and federal constitutional guidelines and found it fatally defective.

In 1975 the Nevada Supreme Court joined the growing list of state supreme courts holding their guest statutes unconstitutional under the equal protection of the law clauses of the federal and state constitutions. In

Laakonen v. Eighth Judicial District, 538 P. 2d 574 (Nev., 1975) Nevada reviewed its guest statute, N.R.S. 41.180, which provided that a guest could not recover from the owner or operator of a motor vehicle for injuries sustained while riding as a guest, except in cases where intoxication, willful misconduct or where gross negligence was the proximate cause of said injuries or damages. See: 538 P. 2d at p. 575.

In the fall of 1975 the Michigan Supreme Court in Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W. 2d 636 (1975) held that the Michigan guest statute, violated the equal protection clause of the Michigan Constitution.

The Manistee decision was subsequently followed by the Michigan Court of appeals in Stanfill v. Powers, 68 Mich. app. 488, 243 N.W. 2d 24 (1976).

The last state supreme court, as of the date of this writing to hold a guest statute violative of the equal protection of the laws provision of the federal and/or state constitution was New Mexico in the September, 1975, case of McGeehan v. Bunch, 88 N.M. 308, 540 P. 2d 238 (1975).

The New Mexico guest statute, Section 64-24-1, provided:

> "No person transported by the owner * * * of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner * * * for injury, death or loss, in case of

It should also be mentioned that the dissent in a 5-4 decision of the Washington Supreme Court in Brewer v. Copeland, 542 p. 2d 445 (1975) also held that the Washington guest statute as "violative of the Washington Privileges and Immunities Clause and probably violative of the Equal Protection Clause of the United States Constitution. 542 P. 2d at p. 462.

Just within the last year, the Court of Appeals of Georgia in Bickford V. Nolen, 235 S.E. 2d 743 (Ga. App. 1977) found the Georgia Guest Statute failed to meet both federal and state constitutional standards. However, because the Supreme Court of Georgia had ruled in the past to uphold the statute, the Court of Appeals determined it could not set the statute

aside and stated that the challenge should be addressed to the Georgia Supreme Court.

As stated in a number of decisions cited herein, Silver v. Silver, 280 U. S. 117, 50 S. Ct. 57, 74 L. Ed. 221 (1929) did not determine all of the issues sought in this petition. Almost 50 years has expired and the Supreme Court of the United States has a duty to hear and determine the issues presented by this appeal. While the issues presented may not be of universal interest, such as the death penalty or reverse discrimination cases, of late, they are indeed important federal questions as related to a nation in which the various states are tied together physically by a vast network of highways. It is the high degree of mobility of the citizenry which presents a situation wherein millions of passengers unknowingly run the gauntlet of guest statute states. While the line is getting shorter, it appears that it will continue to exist until the Supreme Court of the United States puts an end to it. Justice left undone is no justice. The time to act is now.

CONCLUSION

Wherefore, the Petitioner, Patricia K. Corbett, respectfully prays that a Writ of Certiorari be granted.

PATRICIA K. CORBETT,

Petitioner

By: David W. Leifker
David W. Leifker

David W. Leifker Law Offices
823 Dubuque Building
Dubuque, Iowa 52001

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, David W. Leifker, being the attorney for the petitioner herein, do hereby certify that on the 16th day of October 1978 I personally mailed by ordinary first class U. S. Mail, as required by Rule 33 (1) three (3) copies of the within Petition for Writ of Certiorari to Supreme Court of United States with Appendixes A and B attached thereto to the counsel of record for the defendants, Vincent J. Thor and Francis Thor, to-wit: Arnold J. Van Etten, Kintzinger, Kintzinger, Van Etten,

Setter and King, 100 W. 12th Street, Dubuque, Iowa, 52001.

David W. Leifker

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Attorney for Petitioner

APPENDIX A; OPINION OF SUPREME COURT OF IOWA, FILED JUNE 28, 1978

IN THE SUPREME COURT OF IOWA

PATRICIA K. CORBETT,	)	
	)	
Appellant,	)	
	)	
vs.	)	157
	)	60052
VINCENT J. THOR, et al.,	)	
	)	
Appellees.	)	

Appeal from Dubuque District Court - Karl Kenline, Judge.

Plaintiff appeals trial court order overruling her motion for new trial asserting unconstitutionality of § 321.494, The Code.--AFFIRMED.

David W. Leifker, of David W. Leifker Law Offices, of Dubuque, for appellant.

Arnold J. Van Etten, of Kintzinger, Kintzinger, Van Etten, Setter and King, of Dubuque, for appellees.

Considered en banc.*

*Mason, J., serving after June 14, 1978, by special assignment.

PER CURIAM.

Plaintiff in this action was severely injured when the auto in which she was a passenger collided with another car on a street in Dubuque, Iowa. Trial court directed a verdict against her on a negligence count in her petition, holding the record established she was a guest and her action on a negligence theory was barred by § 321.494, The Code (guest statute). Plaintiff, resisting the motion, argued the guest statute was unconstitutional. She raised the same issue in exceptions to instruction and in a subsequent motion for new trial after adverse jury verdict when the case was submitted on a recklessness theory.

Plaintiff's appeal here has been submitted on the same issues explored in Keasling v. Thompson, 217 N.W.2d 687 (Iowa 1974). This appeal was well argued to, and has been considered and determined by, the same justices who considered Keasling. None of the justices has retreated from his views as expressed by the majority or concurring or dissenting opinions in Keasling. In short, five justices affirm trial court, four would reverse.

It follows the judgment entered below in this case is affirmed.

AFFIRMED.

All Justices concur.

APPENDIX B; ORDER OF SUPREME COURT OF IOWA, DENYING PETITION FOR REHEARING, FILED JULY 20, 1978

IN THE SUPREME COURT OF IOWA

PATRICIA K. CORBETT, Appellant,	)	
vs.	)	No. 2-60052
VINCENT J. THOR and FRANCIS THOR, Appellees.	)	O R D E R

Plaintiff-appellant's petition for rehearing, in the above entitled cause, has been duly submitted to the entire membership of the court and is now refused and denied.

Done this 20th day of July, 1978.

/s/ C. Edwin Moore
Chief Justice-Iowa
Supreme Court